

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
April 19, 2005
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

I. ROLL CALL (7:00 p.m.)

II. ADJOURN TO CLOSED SESSION

There are no closed sessions

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES (March 31, 2005 and April 5, 2005)

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

VTa Presentation: Long-Term Transit Capital Investment Program

Proclamations:

- Volunteer Week, April 18-24, 2005
- Volunteer Month, April 2005
- Arbor Day, April 23, 2005

Commendations:

- Milpitas High School Chinese Club for 2005 Lunar New Year Show
- Milpitas High School Vietnamese Club for their Annual Spring Show
- SAFE Graduate Recognitions, Class 11 and 12

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST

XI. MOMENTS OF REFLECTION

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with Asterisks)

XIV. PUBLIC HEARINGS

- 1. Introduce Ordinance No. 124.27 Amending Title XI Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning and Annexation) and Amending Chapter V-500 (Neighborhood Beautification) of the Municipal Code to Enhance the Code Enforcement Program (P-ZT2004-2) (Staff Contact: Tambri Heyden, 586-3280)**
- 2. Approve Community Development Block Grant Funding for FY 2005-06 and Adopt the One-Year Action Plan (Staff Contact: Felix Reliford, 586-3071, Gloria Anaya, 586-3075)**

XV. UNFINISHED BUSINESS

- 3. Approval of Conduct Public Outreach for Individuals Interested in Serving on the Open Government Commission (Staff Contact: Richard Pio Roda, 586-3040)**
- 4. Review and Approve Ethics Project Final Report, Recommendations and Activities for 2005 and 2006. (Staff Contact: Tambri Heyden, 586-3280)**
- 5. Introduce Ordinance No. 54.24 Amending Section 5.05 Of Chapter 20 Of Title I And Section 13.08 Of Chapter 210 Of Title V Of The Milpitas Municipal Code To Provide That Notices Of Appeal To The City Council Shall Only Be Effective Upon Timely Receipt Of Payment Of The Fee Adopted Or Amended By Resolution Of The City Council And To Repeal The Ability To Appeal The Animal Regulation Administrator's Decision To An Appeal Board. (Staff Contact: Tambri Heyden, 586-3280 And Peter Spoerl, 586-3040)**

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes (April 5, 2005)

RA4. Approval of Agenda and Consent Calendar

RA5. Review Draft 2005-2010 Capital Improvement Program (CIP) Report (Staff Contact: Greg Armendariz, 586-3301)

***RA6. Award of Contract: Professional Auditing Services (Staff Contact: Emma Karlen, 586-3145)**

***RA7. Approve Authorization to Enter into Negotiations with Oak Springs Investors, LLC For Affordable Housing Units (Staff Contact: Felix Reliford, 586-3071)**

RA8. Agency Adjournment

XVII. REPORTS OF OFFICERS AND BOARDS

Arts Commission

6. Arts Commission's Recommendations on the Public Arts Funding Threshold and Public Arts Ordinance (Kathleen Yurchak, 586-3209, Arts Commissioner Bill Foulk)

Community Advisory Commission

7. Receive Community Advisory Commission (CAC) Report on Having Non-Denominational Invocations At City Council Meetings, (Staff Contact: Dennis Carrington, 586-3275)

Senior Advisory Commission

- *8. Approve Revised Senior Advisory Commission Bylaws (Staff Contact: Lynette Wilson, 586-2779)

Veterans' Memorial Ad-hoc Committee

- *9. Approve Recommendations from the Veterans' Memorial Ad-hoc Committee on Ways to Recognize and Honor the Former Milpitas Veterans Club (Staff Contact: Mark Rogge, 586-3403)

XVIII. NEW BUSINESS

- *10. Authorize Budget Appropriation From Holding Accounts 1376 and 1377 to Recreation Services Accounts (Staff Contact: Kathleen Yurchak, 586-3209)
- *11. Annual Review of Implementation of General Plan Housing Element Policies (Staff Contact: Felix Reliford, 586-3071).
- *12. Approve Comment Letter on North San Jose Development Policies Update Draft EIR (Staff Contact: Tambri Heyden, 586-3280)

XIX. ORDINANCES

13. Adopt an Ordinance rescinding Chapter 40 of Title I, "Ethics Evaluation Panel," in its entirety from the Milpitas Municipal Code

XX. RESOLUTIONS

- *14. Adopt Resolution Granting Final Acceptance: Playground Equipment Upgrade, Project No: 5077 (Staff Contact: Doug De Vries 584-3313)
- *15. Adopt Resolution Granting Final Acceptance: Cathodic Protection System Repairs, Project No: 7050 (Staff Contact: Doug De Vries, 586-3313)
- *16. Adopt Resolution Granting Final Acceptance: Interim Senior Center Modular Addition, Project No. 8151, (Staff Contact: Mark Rogge, 586-3403)

XXI. BIDS AND CONTRACTS

- *17. Approve Agreement Amendment: SSA Landscape Architects, Inc., Milpitas Sports Center Circulation Project, Project No. 8149 (Staff Contact: Greg Armendariz, 586-3317)**
- *18. Approve Debris Box Agreements With Browning-Ferris Industries, Coast Dumpsters, Environmental Management Systems, Green Waste Recovery Inc. D.B.A. \$99 Debris Box And Recycle West (Staff Contact: Darryl Wong, 586-3345)**
- *19. Approve Agreement Amendment: 4 LEAF Inc., Silicon Valley Intelligent Transportation System (ITS) Project No. 4219 (Staff Contact: Greg Armendariz, 586-3317)**
- *20. Authorize the City Engineer to Execute a Contract Change Order: Coyote Creek Trail, Reach 1, Project No. 4206 (Staff Contact: Mark Rogge (586-3403)**
- *21. Award Construction Contract: Approve Budget Appropriation: Main Sewage Pump Station Site Improvements Project, Project No. 6079 and 2005 Annual Street Resurfacing, Project No. 4223, Interstate Grading & Paving, Inc. (Staff Contact: Doug De Vries, 586-3313)**
- *22. Award Purchase of Fire Hydrants and Water Meters to Groeniger & Co (Staff Contact: Steve Smith, 586-2640)**

XXII. CLAIMS AND DEMANDS

- *23. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 3, 2005, AT 7:00 P.M.**

B E C O M E A C I T Y C O M M I S S I O N E R !

Currently, there are openings on the following City Commissions:

- ▶ Arts Commission**
- ▶ Bicycle Transportation Advisory Commission**
- ▶ Citizens Emergency Preparedness Advisory Commission**
- ▶ Community Advisory Commission**
- ▶ Economic Development Commission**
- ▶ Mobile Home Rental Review Board**
- ▶ Parks, Recreation, and Cultural Resources Commission**
- ▶ Recycling and Source Reduction Advisory Commission**
- ▶ Youth Advisory Commission**

Applications are available online at www.ci.milpitas.ca.gov or in the Agenda rack outside the Council Chambers. Contact the City Clerk's Office (586-3002) for information.

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XIV. PUBLIC HEARINGS

1. Introduce Ordinance No. 124.27 Amending Title XI Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning and Annexation) and Amending Chapter V-500 (Neighborhood Beautification) of the Municipal Code to Enhance the Code Enforcement Program (P-ZT2004-2) (Staff Contact: Tambri Heyden, 586-3280)

Background: At its April 5, 2005, meeting the City Council continued this item to April 19, 2005, to await a legal determination of whether the full City Council can take part in the deliberations on this Ordinance.

At the May 18, 2004, Council Meeting, the Council approved a proposal to expand the City's code enforcement program by proceeding with amendments to the Neighborhood Beautification, Sign and Zoning Ordinances. The amendments were intended to reduce notification timeframes, add administrative citations to the sign code, enable fines without notice for certain violations and require temporary sign registration.

On December 21, 2004, the City Council considered the first reading of the amendments to these ordinances and directed staff to return to the Council in 90 days after achieving greater consensus for the amendments from the Sign Code Task Force. The Council also directed that, upon return of the amendments, the proposal to transition to proactive code enforcement not be included.

On March 15, 2005, the City Council again considered the first reading of this ordinance. The Council directed staff to readvertise a public hearing for April 5, 2005, and reintroduce the ordinance incorporating sign code enforcement options such as:

- Reduction of fines and/or
- A sliding scale that penalizes more heavily those that take a longer period to comply by providing a greater amount of time to comply with a first violation notice or
- Elimination of fines.

Reducing fines and sliding scale

The Council's agenda materials contain a background report and matrix and ordinance that has been revised since the March 15th Council meeting to incorporate fines reduced by 50%, as well as the sliding scale option. These changes, along with the proposed outreach program, would reduce financial impacts to the business community and provide more time for compliance before a fine is levied for non-compliance. The 50% fine reduction for a first violation, for example, would be \$50 as opposed to the \$100 currently assessed for zoning and NBO first violations. If both the reduced fine and sliding scale options are adopted, the staff time and cost incurred up to the point of issuing a citation notice (fine) is 3 hours/\$147.

Elimination of fines

Elimination of fines would result in Sign Ordinance implementation similar to that used currently. Courtesy letters would be sent to those violating the ordinance. Most violators would comply and make their signs conform to the ordinance. Some violators would not comply, resulting in long-term enforcement requiring many hours of staff time and resulting in long-term impacts on their neighbors. Department data shows that

over the past year the time to comply with sign code courtesy violations has doubled without the ability to enforce. If the Council chooses this option, Section 11.03 would need to be deleted and Section 9.04 would need to be renamed and modified as shown on the attachment in the Council's agenda materials called "No Fine Option".

Modification of NBO to allow appeal of a decision of the City Manager

The abatement procedure proposed for the Sign Code and the Zoning Ordinance is identical to that of the NBO with one exception. At the time the NBO was adopted, the City Council decided that the decision of the City Manager at an administrative hearing on abatement of a nuisance was final and could not be appealed to the City Council. However, the Sign Task Force recommended that the abatement procedure language be included with an additional provision allowing appeal of a decision of the City Manager for the Sign Code (30-9.06(g)), Zoning Ordinance (Section 26) and NBO. This NBO language is incorporated in Section 6 of the Ordinance on page 35. Adding this language to the NBO would be a departure from a decision by the City Council at the time the NBO was adopted. At that time the City Council felt that a decision of the City Manager should be final. The City Council may decide to keep the proposed language in Section 6 (page 35 of the ordinance) for the NBO or delete it to reflect the original position of the City Council.

Line of sight triangle

In addition to reflecting enforcement options, the reintroduction of Ordinance 124.27 contains a new subsection (4)(g) under open house directional sign (3.09 (o)) and garage sale sign regulations (3.09 (i)) to clarify the line of sight hazard issue raised at the March 15th Council meeting. Based on real estate sign height information provided by the real estate industry, it is proposed that such signs over 3 feet in height cannot be placed on a public sidewalk or other public right-of-way area if within the 45 foot line of sight triangle.

Political sign section

At the December 3, 2004 Sign Code Task Force meeting, when the Task Force's work was thought to be done, the Task Force discussed making changes to the political sign section of the sign code to limit the maximum aggregate area of political signs per candidate on a parcel. Since political signs were not being modified at this time, staff suggested that the Task Force include this recommendation in their recommendation of support of the proposed ordinance so that if the Council desired, the City Attorney could be directed to make the change at a later date.

Environmental Review

The project is exempt from the provisions of the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the ordinance text amendments may have a significant effect on the environment. The proposed text amendments will reorganize and clarify the Sign Ordinance, address violations in the Sign Ordinance and NBO and provide for Administrative Citation authority in the Zoning Ordinance. These changes will not have a significant effect on the environment.

Recommendation

1. Close the public hearing.
 2. Waive reading beyond title.
 3. Introduce Ordinance No.. 124.27.
 4. Authorize proposed outreach program and continuation of quarterly task force meeting for one year after adoption of the ordinance.
 5. Authorize proceeding with modifying the political sign section of the sign code to add a provision limiting the maximum aggregate area of political signs per candidate on a parcel.
2. **Approve the Community Development Block Grant Funding for FY 2005-06 and Adopt the One-year Action Plan (Staff Contact: Felix Reliford, 586-3071 and Gloria Anaya, 586-3075)**

Background: The purpose of this public hearing is to establish funding levels and uses of the Community Development Block Grant (CDBG) Program for fiscal year 2005-06 and to adopt the One-year Action Plan which describes the eligible programs, projects and activities to be undertaken with CDBG funds in the next fiscal year. An application workbook was previously distributed to the Council that contains a memorandum discussing the general guidelines regarding the use of CDBG funds and a copy of each eligible application received.

CDBG Program

The City's estimated grant for FY 2005-06 is approximately \$670,852. Twenty-eight (28) applications were received for CDBG funding. There are 22 applications requesting funding for Public Services and a total of \$100,627 is available to fund this category. A total of \$436,055 is available to fund Non-public Services.

At its meeting on March 2, 2005, the Community Advisory Commission (CAC) held a public hearing and reviewed the CDBG applications. The CAC has recommended \$670,852 in total funding, including \$115,627 (\$15,000 from CDBG General Program Administration funds for Project Sentinel's Fair Housing Activities) for Public Services and \$436,055 for Non-Public Services. The remaining \$119,170 of the grant is committed for program administration.

Included in the Council's agenda packets is the March 2, 2005, CAC minutes as well as their funding recommendations. All applicants have been notified of the City Council public hearing and have been advised to be present to answer any questions the Council might have.

Action Plan

The City of Milpitas One-Year Action Plan describes the eligible programs, projects and activities to be undertaken with the funds expected to be available during the 2005-06 program year and their relationship to the priority housing, homeless, and community development needs. The Action Plan is in addition to the required Five-year Consolidated Plan previously approved by the Department of Housing and Urban Development (HUD) required for continued funding for all entitlement cities.

In summary, the Action Plan identifies the federal, state and local resources that will be used to fund local programs and services, the strategic plan for implementation and the citizen participation process. As required by HUD, the Action Plan has been advertised for public review and comments for 30 days (March 3 through April 4, 2005).

Copies of the Action Plan were sent to 28 CDBG applicants. Copies were also placed at City Hall and the public library. Public comments received have been incorporated in the Action Plan and will be forwarded to HUD by May 15, 2005. A draft of the One-Year Action Plan is included in the Council's agenda packet.

Recommendation:

1. Close the public hearing on the CDBG funding process and the Action Plan.
2. Approve the CAC recommendations for FY 2005-06 CDBG funding, as submitted.
3. Adopt the One-year Action Plan.

XV. UNFINISHED BUSINESS

3. Approval of Conduct Public Outreach for Individuals Interested in Serving on the Open Government Commission (Staff Contact: Richard Pio Roda, 586-3040)

Background: Section I-310-4.10 of the Milpitas Open Government Ordinance establishes an Open Government Commission. The Commission shall consist of five members appointed by the City Council. All members of the Commission must have demonstrated interest in the issues of citizen access and participation in local government.

The term of each appointed member shall be two years unless earlier removed by the City Council. The Commission shall elect a chair from among its appointive members. The chair's term of office will be one year. Members of the Commission serve without compensation.

The Commission advises the City Council and provides information to other City departments on appropriate ways in which to implement the Open Government Ordinance. The Commission will develop appropriate goals to ensure practical and timely implementation of the Open Government Ordinance and can propose amendments of the ordinance to the City Council. The Commission will report to the City Council at least once a year on any practical or policy issues encountered in the administration of the ordinance. The Commission will receive and review regular quarterly reports on requests for public information.

The Commission will recommend to the Council an administrative process for the review and enforcement of the ordinance. Citizens may appeal to the Open Government Commission if public requests for information are denied or unsatisfied. The Commission is also the appellate body for public requests for City Council members' public records that are denied or unsatisfied.

City Clerk will conduct public outreach which will include interested individuals submitting a Milpitas Community Service application. Concerning the timeline for public outreach, pending approval of the Open Government Ordinance on April 5, 2005, and opening the public outreach period for 30 days, the Council may appoint individuals at its May 17, 2005, meeting, with the deadline for submittal of applications during the second week of May. If the Council wants to appoint individuals sooner, at the May 3, 2005, meeting, Community Service Applications would have to be submitted by April 21, 2005.

Recommendation: Direct staff to conduct public outreach for individuals interested in serving on the Open Government Commission in accordance with the Council's procedures and direct staff to set the deadline for applications for either April 21, 2005, for the May 3, 2005, Council meeting or the second week of May for the May 17, 2005, Council meeting.

4. Review and Approve Ethics Project Final Report, Recommendations and Activities for 2005 and 2006. (Staff Contact: Tambri Heyden, 586-3280)

Background: At the March 15, 2005 City Council meeting, this agenda item was postponed to a later Council date.

The final deliverable under the Ethics Project contract with Dr. Shanks is preparation of a final report that summarizes the first year of the project, assesses its success and makes recommendations for improvements. This final report, titled ""Sustaining *Ethics First!*: A Three-Year Plan for Leadership and Public Trust", dated February 22, 2005, is included in the Council's agenda materials. The report has been edited by the City's project manager for format and typographical errors only and as with past major deliverables, has been reviewed by the Ethics Steering Committee and the Community Advisory Commission.

The report contains seven recommendations and three goals for building leadership and public trust over the next two years. The seven recommendations are as follows:

1. Extend the time the Council spends sharing its decision reasoning with citizens, utilizing the pocket card. (The pocket card was distributed at the first Council training session.)
2. Hold an additional training session for the Commissioners who did not attend one of the training sessions and every effort should be made to gain signatures from 100% of the Council, Commissioners and senior staff who have not signed the Code of Ethics.
3. Take advantage of the Ethics Consultant's pro bono offer to design and/or facilitate the next two Council meeting moments of reflection.
4. Direct the City Attorney to add language to the new Open Government Ordinance to strengthen the lobbyist section.
5. Establish a permanent oversight committee to guide the Ethics Program. The committee should be comprised of six Community Advisory Commission members and three staff members – the Director of Planning and Neighborhood Services, the Human Resources Director and the Information Technology Director. Further, the Program should be resumed this current year.
6. Give the Lead Ethics Evaluator staff support, besides the current assistance from the City Clerk, such as from the Assistant City Attorney, to attend the ethics hearings and assemble non-partisan background pieces and statements of fact. Empower and remunerate the Lead Evaluator to work with parties involved in a complaint to see if a fair resolution can be reached without having to conduct a hearing.
7. Adopt the Ethics Project Final Report and activities recommended for 2005 and 2006 related to three goals presented to the Council last summer. The goals and associated activities are as follows:

GOAL 1 – Make the Code practical and useful for public officials who are expected to follow it.

2005 ACTIVITIES: a) The Council, Commissioners and senior staff should have three programmatic contacts, one a quarter, two of which would be workshops, the third would be decided by the oversight committee using the City's website for ideas. b) A skills assessment would be conducted prior to the first contact and an evaluation performed at the end of each contact.

2006 ACTIVITIES: a) Hold a Council workshop to building public trust as Council members during an election, b) hold a Candidates workshop, c) assist the League of Women Voters in a Final Word Forum, d) conduct a post-election assessment town hall meeting, and e) make consultant available for guidance to candidates.

GOAL 2 – Make the Code an integral part of the organizational culture, style, and business of the City.

2005 ACTIVITIES: a) Plan a process to build a culture of recognition beginning with the Commissioner recognition dinner. b) Implement the Community Partners Program using the forms developed in 2004. c) Revise the ethics website to make it easier to use and to share ideas and problems. d) Make ethics coaching available to Council members who request it.

2006 ACTIVITIES: a) Engage the Council, Commissioners and senior staff in identifying stumbling blocks and developing skills to overcome them. b) Assess whether the Ethics Code needs updating. c) The City Manager should participate with the oversight committee in plan the programmatic contacts for senior staff referenced in Goal 1, 2005 Activities.

GOAL 3 – Make the Code real in the lived experiences of Milpitas residents.

2005 ACTIVITIES: a) Conduct quarterly ethics program awareness communication to residents. b) Gain assistance and ethics program goals commitment from political consultants, employee unions, newspapers, and the South Bay Labor Council.

2006 ACTIVITIES: a) Plan a full scale public information campaign designed to give voters the skills they need to recognize ethical campaign candidates.

Recommendation: With respect to the recommendation to establish a permanent oversight committee, the oversight committee that has been in place for year one of the Ethics Project is the Ethics Steering Committee which is comprised of three CAC members appointed by the CAC – Craig Ranker, Jenifer Lind and Joselito Abelardo and five staff members appointed by the City Manager – Tambri Heyden (project manager and Acting Planning and Neighborhood Services Director), Bill Weisgerber (Fire Chief), Mike McNeely (former City Engineer), Bill Marion (Information Technology Director) and Cherie Rosenquist (Human Resources Director) with legal support provided by Assistant City Attorney John Bakker. Both the Steering Committee and the CAC recommend that CAC representatives be appointed by the CAC and staff representatives be appointed by the City Manager, rather specifically designated by name or position. With this caveat, the CAC and Steering Committee recommend the Council approve Dr. Shanks' final report, recommendations, and activities for 2005 and 2006.

5. **Introduce Ordinance No. 54.24 Amending Section 5.05 Of Chapter 20 Of Title I And Section 13.08 Of Chapter 210 Of Title V Of The Milpitas Municipal Code To Provide That Notices Of Appeal To The City Council Shall Only Be Effective Upon Timely Receipt Of Payment Of The Fee Adopted Or Amended By Resolution Of The City Council And To Repeal The Ability To Appeal The Animal Regulation Administrator's Decision To An Appeal Board. (Staff Contact: Tambri Heyden, 586-3280 And Peter Spoerl, 586-3040)**

Background: At the April 5, 2005 Council meeting, this agenda item was continued to the April 19, 2005 Council meeting.

The City's Animal Regulation Ordinance, adopted in 1995, provides the ability for violators to request a hearing conducted by the Animal Hearing Officer. As per the ordinance, decisions by the Officer, currently a staff member of the Housing Division, resulting from the administrative hearing can be appealed to an appeal board, made up of one or more persons, to be established by City Council resolution. Such an appeal board has never been formed and no one has formally submitted this type of written appeal. Thus, it is recommended that, similar to the Neighborhood Beautification Ordinance, the remedy to contest an administrative officer's decision be through the court system.

In addition, this issue has brought to light an outdated section of the City's Municipal Code Standard Procedures Chapter 20 governing all types of appeals. By Resolution No. 6449, dated July 18th, 1995, the City Council adopted a comprehensive master fee schedule for all City fees and charges in order to recover the costs incurred by the City. This resolution raised the then-existing fee for appeals of administrative decisions to the City Council from \$25 to \$100. Section 5.05 of Chapter 20, however, still references the old fee of \$25, providing that a notice of appeal to the City Council shall not be effective unless a notice of appeal is filed and, where required, "said \$25 fee" paid within the time required. For the sake of internal consistency, the proposed ordinance would amend this section to provide that a notice of appeal requires payment of the fee adopted or amended by resolution of the City Council.

Recommendation:

1. Waive reading of Ordinance No. 54.24 beyond the title.
2. Introduce Ordinance No. 54.24.

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes (April 5, 2005)

RA4. Approval of Agenda and Consent Calendar

RA5. Review Draft 2005-2010 Capital Improvement Program (CIP) Report (Staff Contact: Greg Armendariz, 586-3301)

Background: The draft 2005-2010 Capital Improvement Program (CIP) document has been prepared by staff and was distributed to Council on April 08, 2005. The projects are arranged into six main categories: Community Improvements, Parks, Streets, Water, Sewer, and Storm Drain. The document includes a summary by categories, and individual proposed project descriptions. Previously funded projects are also summarized.

The Parks and Recreation projects have been reviewed and approved by PRCRC on April 4, 2005. The draft CIP document will also be presented to the Planning Commission on April 13, 2005, for a recommendation to find the document in conformance with the General Plan.

A staff presentation of the draft CIP highlights will be provided at the Council meeting. Based upon Council direction, the draft CIP will be finalized and prepared. This final preliminary CIP will then be presented to Council at the May 2005, budget session.

Recommendation: Provide staff with direction and comments on the 2005-2010 CIP.

***RA6. Award of Contract: Professional Auditing Services (Staff Contact: Emma Karlen, 586-3145)**

Background: The City's contract with Maze & Associates for professional auditing services expired in FY 2003-04. Staff issued a RFP on February 15, 2005. Seventeen Certified Public Accounting firms were solicited and six firms responded. In April, a panel consisted of the finance directors of Morgan Hill, Los Altos Hills, and staff interviewed the top three rated firms. Based on results of the interviews, the panel unanimously recommended Maze & Associates for the auditing services. Maze & Associates specialized in governmental auditing and has an extensive base of clients in this region. Maze is committed to meet the City's audit timeline. Staff recommended entering into a three- year contract with Maze & Associates with optional one-year renewals (total contract term not to exceed five fiscal years). The scope of the service includes issuance of audit reports on the financial statements of the City, Redevelopment Agency, Milpitas Public Financing Authority, Single Audit, and Transportation Development Act. The fees for providing these audit services will not exceed \$72,315 in the first year. The fees for subsequent years will be adjusted by the Bay Area Consumer Price Index.

Recommendation: Authorize the City Manager to execute a three-year agreement for professional auditing services with optional one-year renewals (total contract term not to exceed five fiscal years) with Maze & Associates for \$72,315 in the first year.

***RA7. Approve Authorization to Enter into Negotiations with Oak Springs Investors, LLC For Affordable Housing Units (Staff Contact: Felix Reliford, 586-3071)**

Background: Jim Murar with Oak Springs Investors, LLC, Newport Beach, California is proposing to develop a 153 unit for-sale townhome project.. The project is to be located on South Main Street, near Montague Expressway (just north of the Shell Gas Station, adjacent to the Jack-In-The-Box restaurant). Staff has met with the developer and both parties are in agreement to provide 31 affordable housing units (20%) to be affordable with financial assistance from the agency. The final details of the agreement will be presented to the City Council for approval at a later date. It is recommended that the Agency authorize staff to enter into negotiations with Oak Springs Investors, LLC for the purpose of providing financial assistance from the Agency's 20% affordable housing set-aside funds. The Agency's authorization to enter into negotiations should

not be considered implied approval for any of the forms of assistance requested by the developer. Any agreement negotiated is subject to the Agency/Council review and approval.

Recommendation: Approve authorization to enter into negotiations with Oak Springs Investors, LLC to provide Agency financial assistance from its 20% affordable housing set-aside funds.

RA8. Agency Adjournment

XVII. REPORTS OF OFFICERS AND BOARDS

Arts Commission

6. Arts Commission's Recommendations on the Public Arts Funding Threshold and Public Arts Ordinance (Kathleen Yurchak, 586-3209, Arts Commissioner Bill Foulk)

Background: At the City Council meeting on March 15, 2005, the Council requested that the Arts Commission discuss and make recommendations on whether the \$1 million minimum threshold on CIP projects in applying the 1.5% formula be reviewed in three years or become effective in three years and secondly discuss the items in the memo from Vice Mayor Gomez and Council Member Giordano, entitled Item RA-6 – Public Arts Ordinance Funding Recommendations. The Arts Commission held a Special Meeting on April 7, 2005, and discussed each item at length and made the following recommendations to City Council for their consideration. The Commission is recommending that the \$1 million minimum threshold on CIP projects in applying the 1.5% formula be reviewed in three years.

The Commission reviewed each item in the memo and made the following recommendations:

Statement of Purpose to read – The City of Milpitas accepts responsibility for expanding opportunities to its citizens to experience public art. An ordinance designed specifically for Milpitas will ensure a public art program that enhances the quality of life in its community. An ordinance is hereby established to direct the allocation of 1.5% of identified capital improvement projects toward the acquisition, construction and installation of public artworks.

Additional Guidelines

1. A minimum threshold of \$1 million on a CIP projects towards the eligibility for the 1.5% formula application is to be reviewed in three years.
2. Add "City" to manager as to who will notify the Public Arts Committee of which projects are deemed eligible construction projects for the 1.5% formula application.
- 3-5. No changes.
6. Add the following sentence. All guidelines are subject to the recommendation and discretion of the Public Arts Committee.
7. No changes.
8. The City and the Milpitas Redevelopment Agency shall establish a Public Arts Committee. The Committee will be composed of the membership of the Milpitas Arts Commission and 2 members of the Milpitas Alliance for the Arts or its successor non-profit organization, as appointed by the City Council with a three-year term limit per member.
9. No changes.

10. The City and the Milpitas Redevelopment Agency shall jointly develop a Public Arts Master Plan, with input from the public and the review, advice and recommendation of the Public Arts Committee.
- 11-12. No changes.

Recommendation: Accept the Arts Commission recommendation and direct staff accordingly.

Community Advisory Commission

7. Receive Community Advisory Commission (CAC) Report on Having Non-Denominational Invocations At City Council Meetings, (Staff Contact: Dennis Carrington, 586-3275)

Background: At its December 21, 2004, meeting the City Council considered having a non-denominational invocation at City Council meetings. The Council directed that the CAC add to its short-term work plan the potential of having a short non-denominational prayer prior to the start of City Council meetings and to solicit feedback from the community, look at policies in other cities, and report back to the Council.

At its January 5, 2005 meeting, the CAC discussed this task and directed staff to look at the policies of other cities and report back to the Commission in April or May. Staff contacted several cities in Santa Clara County and the region. In summary, the Cities of Gilroy, Morgan Hill, San Jose and Santa Clara have invocations. The Cities of Campbell, Cupertino, Fremont, Mountain View, Palo Alto, Los Altos, Los Altos Hills, Saratoga and Sunnyvale do not have invocations.

Gilroy. Pastors are invited to give invocations. They must conform to the requirements of the case of Rubin v. City of Burbank that held that city council meetings may not begin with a sectarian prayer. Gilroy provided a copy of its invocation instructions, an invocation schedule and a letter sent to pastors informing them of the schedule (attached).

Morgan Hill. There is a silent invocation by the Mayor. Morgan Hill has no prayer or invitation to churches to provide invocations.

San Jose. Each council member is responsible for invocations for a month. There is no policy on the content of the invocation. For example it could be a prayer, skit or choir. There is no requirement that an invocation be non-denominational.

Santa Clara. There is a prayer at the beginning of every city council meeting as follows:

OH HEAVENLY FATHER ON HIGH.
WE HUMBLY SEEK THY BLESSINGS UPON THIS MEETING.
GRANT US STRENGTH, COURAGE AND WILL TO PERFORM OUR
OBLIGATIONS AND DUTIES TO OUR PEOPLE WITH JUSTICE TO ALL.
GRANT US WISDOM SO THAT WE MAY ACT WISELY AND
FOR THE BEST INTERESTS OF OUR PEOPLE, OUR NEIGHBORS AND OUR
COUNTRY.
ALL THIS WE ASK IN THY NAME, WHO REIGNS,
THE WORLD WITHOUT END
AMEN

On February 2, 2005, after staff presented the research of other cities' policies, the CAC directed staff to get feedback from the other City commissions and report back at the April 6, 2005, CAC meeting. Staff sent e-mails to all members of City commissions asking:

1. Are you are in favor of having a short invocation at the beginning of City Council meetings or,
2. If you are opposed, are you in favor of a silent invocation where a minute would be reserved for all to pray or meditate in silence?

Staff received 36 responses as follows:

NON-DENOMINATIONAL INVOCATION SURVEY			
OPTION	In favor of short invocation	In favor of silent invocation	Opposed to any invocation
Arts Commission	2		2
Bicycle Transportation Advisory Commission	1		
Citizens Emergency Preparedness Advisory Commission			1
Community Advisory Commission		1	3
Economic Development Commission	4		
Library Advisory Commission	1	2	1
Parks, Recreation, and Cultural Resources Commission		1	1
Planning Commission	1	1	1
Recycling and Source Reduction Advisory Commission	1		
Senior Advisory Commission	5		
Sister Cities Commission	2	1	2
Telecommunications Commission	2		
Youth Advisory Commission			
TOTAL	19 (53%)	6 (17%)	11 (30%)

CAC action. The CAC noted that of 118 sitting members of city commissions (129 total (including alternates) with 11 vacancies) only 36 commissioners (31%) responded to the survey. Nineteen commissioners were in favor of a non-denominational invocation at the beginning of City Council meetings, six were in favor of a silent invocation and eleven were opposed to either a non-denominational invocation or a silent invocation. The CAC unanimously directed that staff prepare a report to the City Council on their study of non-denominational invocations.

Memorandum from City Attorney. The City Attorney has prepared a memorandum (attached to the Council's agenda materials) regarding the legality of invocations as part of public meetings such as the City Council meeting. The Supreme Court in its Marsh v. Chambers decision held that a short non-denominational invocation did not violate the Constitution. The prayer must not be a "proselytizing activity" or "symbolically place the government's official seal of approval on one religious view". Therefore, a short, non-denominational invocation may be given prior the start of the City Council meeting so long as it satisfies the constitutional requirement that it not be used to advance one faith or belief over another. Persons invited to give an invocation should be clearly informed that the invocation should be short, non-denominational, and should not be used to proselytize or to advance or disparage any particular religious viewpoint.

Recommendation: Receive the CAC's report, and determine City Council policy on non-denominational invocations at City Council meetings.

Senior Advisory Commission

- *8. Approve Revised Senior Advisory Commission Bylaws (Staff Contact: Lynette Wilson, 586-2779)**

Background: At the December 28, 2004, Senior Advisory Commission meeting, the Commission discussed changing their Bylaws, which would eliminate the two (2) Member At Large positions and require that all nine (9) seats be appointed by the City Council. Over the past two years, it has become increasingly difficult for the "Member-At-Large" positions to be filled. There is a lack of interest from the Senior Center participants in addition to the time it takes to hold elections. The election can take several months to complete due to the time required to announce the need for candidates and the election dates in the bi-monthly Senior Center newsletter and to hold the election. Due to the length of time to fill the Member-At-Large seats, the Senior Advisory Commission is subject to vacancies for a good period of time.

The Commission unanimously voted to eliminate the two (2) Member-At-Large positions and to have all nine (9) seats be appointed by the City Council. Attached are the unapproved minutes from the Senior Advisory Commission's December 28, 2004, meeting for reference, in addition to a copy of the Senior Advisory Commission Bylaws identifying the requested changes.

Recommendation: Approve the revised Senior Advisory Commission Bylaws to reflect the elimination of the two (2) Member-At-Large positions and require that all nine (9) seats be approved by the City Council.

Veterans' Memorial Ad-hoc Committee

- *9. Approve Recommendations from the Veterans' Memorial Ad-hoc Committee on Ways to Recognize and Honor the Former Milpitas Veterans Club (Staff Contact: Mark Rogge, 586-3403)**

Background: The City Council requested that the Veterans' Memorial Ad-hoc Committee reconvene to consider ways to recognize and honor the former Milpitas Veterans Club. The Committee met and formulated several recommendations for the City Council's consideration. Details of the recommendations are provided in the Committee's Memorandum and associated attachments.

The Committee found that it would be fitting to honor the members of the Milpitas Veterans Club by further enhancing the Veterans' Memorial area with a "meditation bench" and associated plaque. The "meditation bench" would be placed near the memorial. This placement provides a dual use: it would be a welcome place for people to sit while viewing the memorial and contemplating their thoughts; during ceremonies, the bench could provide a place of honor to seat distinguished guests or honorees. The Committee also requested the City Council issue a proclamation recognizing the Milpitas Veterans Club, and issue commendations to honor the surviving members.

The cost estimate for these improvements is \$6,000 including staff costs. Sufficient funds are available from project 5010, "Park Renovation Plan".

At this time, the Committee is seeking Council approval to proceed with their recommendations, and to direct staff to have the “mediation bench” installed as described, and to prepare the Proclamation and commendations for issuance by Council at the May 17th, 2005 City Council meeting.

Recommendations:

1. Approve recommendations of the Veteran’s Memorial Ad-hoc Committee to install a “mediation bench”, and issue a Proclamation and commendations at the May 17, 2005 City Council meeting

XVIII. NEW BUSINESS

***10. Authorize Budget Appropriation From Holding Accounts 1376 and 1377 to Recreation Services Accounts (Staff Contact: Kathleen Yurchak, 586-3209)**

Background: Recreation Services has accumulated donations and sponsorship funds in Holding Accounts 1376 and 1377. Recreation Services is requesting approval to process a budget appropriation for the funds from these Holding Accounts into specific program accounts to purchase needed supplies that have not been budgeted in Recreation Services’ operating budget. Each request is detailed below.

1. The Community Concert Band has received a total of \$1,434.53 from audience contributions during their concerts. Staff is requesting a budget appropriation to the Cultural Arts Supplies Account 100-168-4221 to pay for entry fees to for the Delta College Festival \$90.00, Carmichael Festival \$50, Community Band Polo shirts \$700 and the purchase of new music \$594.53.
2. Rainbow Theatre has received donations totaling \$3,355.23. Staff is requesting a budget appropriation to the Rainbow Theatre Supplies Account 100-169-4221 to pay for (2) \$500, totaling \$1,000, Rainbow Theatre Scholarships to be awarded in May of 2005. The remaining \$2,355.23 will be used to offset the purchase of 6 new 4x8 foot Mylar mirrors to be used in the set of “Fame” and for use during dance rehearsals in the auditorium. The total cost for the mirrors is \$3,215.13, which includes tax and delivery. Additional funding will be utilized from Rainbow Theatre’s operating budget to cover the remaining cost of the mirrors not funded through the Holding Account.
3. The Teen Center has \$5,882.50 in Holding Account 1377-2500 from the collection of event donations, such as teen dances, band nights, and break dancing competitions. Staff is requesting a budget appropriation to the Teen Center’s Supplies Account 100-166-4221 to purchase the following items to allow programming possibilities at the Teen Center; Home Theater System replacement \$1,149 & DVD/VCR Combo \$79.96, Ping Pong Table replacement \$800, Pull Down Movie Screen \$282, Pool Cues \$64.40 and Headphones for the computer lab \$79.96/4 pairs, totaling \$2,455.32, leaving \$3,427.18 in Holding Account 1377-2500.
4. City Special Events has received a total of \$16,444.73 from donations. Staff is requesting a budget appropriation to the Special Events Supplies Account 100-167-4221 to pay for the following items; Sound System for Mobile Stage \$2,000, 2-way Radios \$2,500, Event T-Shirts for Volunteers \$2,500, Flags for a Flag Garden for Patriot’s Day \$3,000, Radio Announcements for “A Taste of Milpitas” \$1,000, Matte Cutter \$100, Paper Cutter \$300 and supplies to upgrade the patio area at the Senior Center \$500, totaling \$11,900, leaving \$4,544.73, which will be transferred into the General Fund.
5. Recreation Services received a grant from the United States Tennis Association for \$1,338.50 to implement “Get Out and Play Days”. Grant funds would be used to purchase 75 youth rackets, 25 adult rackets, seven dozen tennis balls,

five portable tennis nets and four ball baskets, to implement free tennis instruction for youth and adults in Milpitas. The grant has been deposited into HA 1377-2500 and staff is requesting a budget appropriation for the total grant amount of \$1,338.50 into Recreation Services Supplies Account 100-161-4221 to purchase the listed items.

Recommendation: Authorize budget appropriation using money in the Holding Accounts into Recreation Services program accounts:

1. HA1377-2500 to Cultural Arts Supplies Account 100-168-4221 in the amount of \$1,434.53
2. HA 1376-2500 to Rainbow Theatre Supplies Account 100-169-4221 in the amount of \$3,355.23.
3. HA 1377-2500 to Teen Center Supplies Account 100-166-4221 in the amount of \$2,455.32.
4. HA 1377-2500 to Special Events Supplies Account 100-167-4221 in the amount of \$11,900.
5. HA 1377-2500 to Recreation Services Supplies Account 100-161-4221 in the amount of \$1,338.50.

Recommendation: Approve the draft comment letter on the EIR.

***11. Annual Review of Implementation of General Plan Housing Element Policies (Staff Contact: Felix Reliford, 586-3071)**

Background: At its meeting on March 8, 2005, the City Council requested an annual review of the Housing Element Implementation Policies to determine the City's progress on meeting its housing goals. The Council adopted the Milpitas Housing Element in October 2002. In November 2002, the Housing Element was forwarded to the State of California, Department of Housing and Community Development (HCD), which found the Milpitas Housing Element to be in compliance with state law. In March 2003, HCD provided the City of Milpitas with its Local Government Leadership Award on the Housing Element and has used the Housing Element document as a model for the state. Annual reviews of the implementation of the Housing Element were provided to the Planning Commission in December 2003 and March 2005.

Status of Housing Element Policies Implementation

The following is a summary of ABAG'S housing need allocation for Milpitas through June 30, 2007.

<u>Income-Level</u> <u>Percent</u>	<u>Units</u>	
Very-low (50% AMI)	698	16 %
Low (51%-80% AMI)	351	8.1%
Moderate (81%-120% AMI)	1,146	26.4%
Above Moderate	<u>2,153</u>	<u>49.5%</u>
Total:	4,348	100%

(AMI): Area Median Income

To date, Milpitas has provided 1,217 (28%) of the total number of units required by ABAG. An additional 1,919 units have currently been approved or are anticipated to be reviewed and considered for approval by the Planning Commission and City Council:

<u>Proposed and Approved Projects</u>	<u># of Units</u>	<u># of Affordable Units</u>
Parc North (a)	285	58
Apton Plaza (a)	101	19
Edsel Court (a)	16	4
Kaufman & Broad (a)	685	137
Town Center (a)	68	19
Fairfield Apartments (p)	480	96
Milpitas Senior Housing (p)	103	103
California Towers (p)	<u>181</u>	<u>36</u>
Total:	1,919	472

(a) Approved (1,155 units)

(p) Proposed (764 units)

Based on the existing (1,217 units), approved (1,155 units) and proposed (764 units) residential housing units in the City of Milpitas to date will have met 72% of its regional fair share allocation (or 3,136 housing units) required by ABAG. Staff is still negotiating with several developers on several of the proposed projects to determine the ratio of very low, low and moderate income-households to meet the ABAG regional housing goals.

Affordable Housing:

Currently, the City of Milpitas has 668 affordable housing units with long-term affordability restrictions on the units. If the proposed and approved projects noted above are built, an additional 472 affordable housing units will be added to the City's housing stock. This will bring the total number of affordable housing units in Milpitas to 1,140 units. It should be noted that the City of Milpitas Mobile home Park Rental Increase Ordinance adopted in 1992 provides affordability to 572 mobile home-park residents, which serves as another means of affordable housing. This will bring the total number of affordable units to 1,712 in Milpitas.

Staff will also be working with CA Housing Finance Authority to obtain greater access to Proposition 46 funding (\$2.1 billion Housing Bond Initiative passed by the voters in 2002) and the ability to leverage the Redevelopment Agency funds for future affordable housing projects.

Implementation of Milpitas Housing Element Policies

The status of implementation of the Milpitas General Plan Housing Element Guiding Principles and Implementation Policies are included in the Council's agenda packet for review.

Recommendation: Note receipt and file

***12 Approve Comment Letter on the North San Jose Development Policies Update Draft EIR (Staff Contact: Tambri Heyden, 586-3280)**

Background: On March 10, 2005, the City of San Jose released the North San Jose Development Policies Update for public review with the period ending on April 25th. San Jose is proposing to intensify development allowed within the Rincon de los Esteros Redevelopment Area. The EIR addresses the impacts of developing approximately 26.7 million square feet of new industrial/office/R&D building space in the Rincon area beyond the existing entitlements. In addition, up to 32,000 new dwelling units would be allowed increasing the population of the area by approximately 56,640 people.

Staff has identified the following three major issues that have been incorporated into the comment letter:

1. Sewer Capacity

The EIR concluded that the Water Pollution Control Plant (WPCP) would not need to be expanded to accommodate the additional growth. This conclusion was based in part on the reduced sewer flows experienced as a result of the down turn in the economy. San Jose's sewer flow to the WPCP in 1998 was 94 million gallons per day (mgd) and their existing flow is now 73 mgd. The analysis assumed that the majority of the existing vacant buildings would not re-occupy and that approved flow would be used to help intensify the project area in North San Jose.

2. Odor Impacts

Though the EIR makes reference to potential impacts from odors originating from the WPCP, there is no analysis or conclusion of the significance of these impacts nor is there any mention of the Newby Island Compost facility. These omissions are significant given the substantial residential population that would be created within the project area.

3. Traffic Impacts

The development resulting from these proposed policies would generate approximately 430,000 vehicle trips per day and only 137,000 (32%) of the trips are expected to stay within the North San Jose area. The EIR concludes that the following Milpitas intersections that would be significantly impacted by the project would be: I-880 Northbound Ramps/Great Mall Parkway, SR-237(Calaveras Boulevard)/Milpitas Boulevard, Montague Expressway/Great Mall Parkway, and McCarthy Boulevard/Tasman Drive. However, the technical analysis did not include trips from approved projects in Milpitas (e.g. Terra Serena, Parc North, Apton Plaza, Town Center), while approved trips were included for all San Jose and Santa Clara intersections. At staff's request, Fehr & Peers conducted a peer review of the technical analysis and determined that adding the approved trips in Milpitas, the North San Jose project will impact seven intersections in Milpitas instead of just four locations cited above. The three new impacted intersections are the Calaveras Boulevard/Abel Street, the I-880 Southbound Ramps/Tasman Drive, and the Montague Expressway/South Milpitas Boulevard intersections.

Recommendation: Approve the draft comment letter on the EIR.

XIX. ORDINANCES

13. Adopt Ordinance Rescinding Chapter 40 of Title I, "Ethics Evaluation Panel," in its entirety from the Milpitas Municipal Code

Background: Ordinance No. 265, adopted and codified on August 17, 2004 as Title I, Chapter 40, "Ethics Evaluation Panel," established and created procedures for an Ethics Evaluation Panel in the City. This new ordinance would rescind Ordinance No. 265, removing Chapter 40 of Title I, "Ethics Evaluation Panel," from the Milpitas Municipal Code.

The Citizen's Advisory Commission Chair (CAC) drafted a letter respectfully requesting that the Council take no further action on the second reading to rescind ordinance No. 265 removing Chapter 40 of Title I, the "Ethics Evaluation Panel" from the Milpitas Municipal code.

The Citizens Advisory Commission requested that the delay continue until the ethics evaluation final report has been presented by Dr. Shanks and the annual ethics evaluation panel report by Dr. Riley has been reviewed by the Council at an agendaized meeting. The CAC also respectfully requests that the reports be agendaized at its monthly meeting for their review and input before any decisions are made by the Council.

Recommendation: If the Council so desires, move to waive reading beyond the title and adopt.

XX. RESOLUTIONS

***14. Adopt Resolution Granting Final Acceptance: Playground Equipment Upgrade, Project No: 5077 (Staff Contact: Doug De Vries 584-3313)**

Background: This project to install new playground equipment at Dixon Landing Park, Foothill Park, Hall Park, and Pinewood Park was initially accepted by City Council on April 6, 2004. Staff conducted a final project inspection and has determined the work to be satisfactory. The one-year project warranty period has expired. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the Contractors bond.

***15. Adopt Resolution Granting Final Acceptance: Cathodic Protection System Repairs, Project No: 7050 (Staff Contact: Doug De Vries, 586-3313)**

Background: This project to install cathodic protection equipment onto various existing pipelines was initially accepted by City Council on April 6, 2004. Staff conducted a final project inspection and has determined the work to be satisfactory. The one-year project warranty period has expired. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the Contractors bond.

***16. Adopt Resolution Granting Final Acceptance: Interim Senior Center Modular Addition, Project No. 8151, (Staff Contact: Mark Rogge, 586-3403)**

Background: This project consisted of providing and installing a 60'x 60' pre-engineered modular building to serve as the Interim Senior Center. The scope of this project also included seismic tie downs and utility connections to the building, as well as providing new decking and awning around the perimeter of the building.

The Interim Senior Center Modular Addition Project was initially accepted by City Council on March 16, 2004 and the one-year project warranty period has since expired. Prior to the warranty period expiring, City staff conducted a final project inspection and determined the work performed by the contractor, Brandall Modular Corp, to be satisfactory. Therefore, staff requests that Council grant final acceptance and allow for the release of the contractor's bond.

Recommendation: Adopt resolution granting final acceptance and release of the Contractor's bond.

XXI. BIDS AND CONTRACTS

- *17. Approve Agreement Amendment: SSA Landscape Architects, Inc., Milpitas Sports Center Circulation Project, Project No. 8149 (Staff Contact: Greg Armendariz, 586-3317)**

Background: On September 21, 2004, the City Council awarded a consultant contract to SSA Landscape Architects, Inc. (SSA) for professional design services on improvements to the Sports Center Circulation project. Additional services are needed outside of their original scope of design work, to provide adjustments to the original site plan, additional cost estimates and structural calculations. An agreement amendment is proposed for these services. Staff has negotiated a scope and fee not to exceed \$22,900.00, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

Recommendation: Approve the agreement amendment with SSA Landscape Architects, Inc., in the amount of \$22,900.00, subject to approval as to form by the City Attorney.

- *18. Approve Debris Box Agreements With Browning-Ferris Industries, Coast Dumpsters, Environmental Management Systems, Green Waste Recovery Inc. D.B.A. \$99 Debris Box And Recycle West (Staff Contact: Darryl Wong, 586-3345)**

Background: In accordance with Title V, Chapter 200 of the Milpitas Municipal Code, debris box haulers are required to apply for an agreement authorizing the hauler to engage in the business of collecting and disposing of non-organic solid waste and/or construction and demolition debris produced, kept or accumulated within the city limits of Milpitas. The haulers are required to pay the City a compensatory fee equal to 12% of the total gross receipts actually collected or received. Several firms have applied for agreements to provide debris hauling services within Milpitas. Staff has reviewed the applications and recommends approval of the agreements.

Recommendation: Authorize the City Manager to execute debris box agreements with Browning-Ferris Industries, Coast Dumpster, Environmental Management Systems, Green Waste Recovery Inc. dba \$99 Debris Box, and Recycle West, subject to approval as to form by the City Attorney.

- *19. Approve Agreement Amendment: 4 LEAF Inc., Silicon Valley Intelligent Transportation System (ITS) Project No. 4219 (Staff Contact: Greg Armendariz, 586-3317)**

Background: The Silicon Valley Intelligent Transportation System (ITS) project is a multi-jurisdictional project, which extends fiber optic communication lines between Traffic Management Centers in Fremont, Milpitas and Caltrans District Office in

Oakland. Closed Circuit Television cameras are also being installed along the North – South corridors between Milpitas and Fremont to monitor traffic congestion. This project is reimbursed entirely by a State and Federal grant fund.

4 LEAF Inc, is providing grant administration and construction coordination services for this project. The contractor experienced difficulties completing the work on time

Additional services are needed from 4 LEAF Inc, to complete the construction closeout phase and prepare documentation for potential claims. It is expected that these additional costs incurred by the City will be collected from the contractor in the form of liquidated damages. An agreement amendment with 4 LEAF Inc. is proposed for these additional services with a not to exceed amount of \$17,500 which is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this additional expense.

Recommendation: Authorize the City Manager to execute the agreement amendment with 4 LEAF Inc., in the amount of \$17,500, subject to approval as to form by the City Attorney.

***20. Authorize the City Engineer to Execute a Contract Change Order: Coyote Creek Trail, Reach 1, Project No. 4206 (Staff Contact: Mark Rogge (586-3403))**

Background: The City Council awarded this project to GradeTech Inc. on February 1, 2005, and construction has begun. The completed project will provide a new trail along the Coyote Creek levee, plantings, irrigation, trail amenities, and related work. The anticipated completion date is September 2005.

This construction contract has many line items with estimated quantities and prices for each unit of work. In such a “unit price” contract the quantities of items are estimated and a “balancing change order” is done at the end of construction to change estimated quantities to actual field measured quantities. A contingency of approximately 10% is considered normal to cover the variations that may occur between estimated and field-measured quantities.

The Coyote Creek Trail project includes adjusting the levee to provide a minimum width of 18-feet for a length of approximately two miles. The elevations must be kept within tight tolerances as required by the Santa Clara Valley Water District for flood control purposes. Due to the long length and width, very minor changes in the elevation, such as settlement or erosion can result in large differences in earthwork quantities.

Now that the Contractor has surveyed the project site, we have information on field-measured quantities required to construct the Coyote Creek Trail. The revised quantities show an increase in labor and materials for earthwork, and other trail materials, as well as a need for additional land survey work to verify the trail alignment and elevation in compliance with grant funding for this project. Staff has negotiated a fee not to exceed \$59,101 with the Contractor to account for the revised quantities necessary for trail construction.

The contract change order also converts the contract from a unit price to a lump sum contract, since we no longer expect any difference in quantities, and wish to avoid any claims for additional quantities at the end of the project. Since the value of the change order is based upon the reasonable differences between estimated and field-measured quantities, multiplied by the contract bid unit prices, staff believes the value of the change order is reasonable for the work involved. Staff recommends approval of this

change order and sufficient funds are available in the project budget for this change order.

Recommendation: Authorize the City Engineer to execute the Contract Change Order for GradeTech Inc. in the amount of \$59,101, and changing the contract from a unit price contract to a lump sum contract.

- *21. Award Construction Contract: Approve Budget Appropriation: Main Sewage Pump Station Site Improvements Project, Project No. 6079 and 2005 Annual Street Resurfacing, Project No. 4223, Interstate Grading & Paving, Inc. (Staff Contact: Doug De Vries, 586-3313)**

Background: On February 15, 2005, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals. This project provides roadway reconstruction of Acadia Avenue, Glacier Drive, Mt. Diablo Avenue, Portola Drive, a section of Mt. Shasta Avenue west of Park Victoria Drive. The work includes asphalt concrete overlay on McCarthy Boulevard between Montague Expressway and Barber Lane, and on Evans Road between Calle Oriente and Kennedy Drive.

This project also includes asphalt concrete paving work for approximately 21,600 square feet of parking lot at the Main Sewage Pump Station. Cost for this work to be funded by the Main Sewage Pump Station Site Improvements Project, Project No. 6079.

The project was advertised and sealed bid proposals were opened on April 8, 2005. The Engineer's estimated construction cost for all work was \$850,000. The bid proposals ranged from \$548,398.00 to 744,219.00, and the lowest responsive bidder is determined to be Interstate Grading & Paving, Inc.

A budget appropriation in the amount of \$100,000.00 from the Street Fund is recommended to award this project

Recommendation:

1. Award Construction Contract to Interstate Grading & Paving, Inc. in the amount of \$548,398.00.
2. Approve a budget appropriation for \$100,000 from the street fund into 2005 Annual Street Resurfacing, Project No. 4223

- *22. Award Purchase of Fire Hydrants and Water Meters to Groeniger & Co (Staff Contact: Steve Smith, 586-2640)**

Background: Staff solicited Requests for Quotations to furnish Clow Fire Hydrants and Hersey Water Meters and assorted fittings. Three vendors responded. The following is a recap of quotes received:

<u>Bidder</u>	<u>Amount</u>
Kenko Utility	\$29,349.40
Ed Walsh Company	\$29,265.93
Groeniger & Co.	\$25,675.82

(There are sufficient funds available in the Public Works Utilities Operating Budget for this purchase.)

Recommendation: Award the purchase of fire hydrants and water meters to Groeniger & Co.

XXII. CLAIMS AND DEMANDS

- *23 Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$8,124.16 to Pacific Power Control, Inc. for emergency repairs at Gibraltar and Ayer Pump Stations. At Gibraltar Pump Station the power inverter failed, over loading and burning out the battery and charging system. At Ayer Pump Station the contactor unit failed, over loading and burning out the battery and charging system. Both systems are old by Uninterruptible Power Supply (UPS) standards. The Gibraltar unit is a 1992 model and the Ayer unit is a 1994 model. (Funds are available from Public Works Utilities Operational budget for these repairs.)

Recommendation: Approve the purchase request.

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 3, 2005, AT 7:00 P.M.**